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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,204	04/13/2004	Andy Kenowski	470037.90718	4051
26710	7590	08/09/2005	EXAMINER	
QUARLES & BRADY LLP 411 E. WISCONSIN AVENUE SUITE 2040 MILWAUKEE, WI 53202-4497			STINSON, FRANKIE L	
			ART UNIT	PAPER NUMBER
			1746	

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/823,204

**Applicant(s)**

KENOWSKI ET AL.

**Examiner**

FRANKIE L. STINSON

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over van den Berg et al. (U. S. Pat. No. 5,651,329) in view of Kuta et al. (U. S. Pat. No. 5,425,385), Buck (U. S. Pat. No. 6,089,242), Labib et al. (U. S. Pat. App. Pub. No. 2004/0007255) or van den Berg et al. (U. S. Pat. No. 6,323,033).

Re claim 1, van den Berg'329 is cited disclosing a clean-in-place system for cleaning an apparatus (see fig. 2 for example), the system comprising:

a tank (16) containing a fluid composition having a measurable physical property a first measured value, the tank having a supply valve/cock (35) and a return valve/cock (4, 6, 42);

a fluid supply conduit (34) in fluid communication with the supply valve of the tank and an inlet of the apparatus;

a fluid return conduit (unnumbered) in fluid communication with the return valve of the tank and an outlet of the apparatus;

a physical property (temperature) sensor (25) in the fluid return conduit for repeatedly sensing the measurable physical property of fluids passing through the fluid return conduit and for generating a physical property signal corresponding to each sensed measurable physical property; and a controller responsive (14) to physical property signals from various sensors and providing control signals to various valves,

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the controller for executing a program stored on the controller that differs from the claim only in the functional language of the flow rate sensor for generating a signal, and a controller opening the supply valve/cock and the return valve/cock to circulate the fluid composition through the tank and the apparatus, comparing successive physical property signals from the sensor, and close the return valve/cock at a time after successive physical property signals have a deviation greater than a predetermined amount. The patent to Kuta is cited disclosing a flow sensor (see col. 10, lines 3-19) that generates a control signal. It therefore would have been obvious to one having ordinary skill in the art to modify the device of van den Berg'329, to include a flow rate signal to be sent to the controller, to control the cleaning process as a function of the flow rate in addition to other parameters, since Kuta discloses that the process is carried out in view of several parameters (see col. 2, lines 3-19). The patents to Kuta, Buck, Labib and van den Berg'033 are each cited in a clean-in-place system, the arrangement of providing a controller ("PLC" in Kuta, 10 in Buck, 600 in Labib and 14 in van den Berg'033) where the controller receives physical property signals from sensors and controls valving in response there to (see Kuta col. 7, lines 54-68, col. 14, lines 1-59; see Buck's Abstract and col. 2, line 34 thru col. 3, line 47; see Labib, paragraph 107 and see van den Berg'033, col. 3, line 63 thru col. 4, line 36). It therefore would have been obvious to one having ordinary skill in the art to modify (or program) the controller in van den Berg'329, to open and/close the valves as a function of the cleaning composition's physical property(ies) for the purpose of ensuring that the cleaning process is complete and meets industry standards. It is old and well known in various arts to control, in an

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associated process, various elements of the system, i.e. valving, pumps, motors as a function of system parameters. The control in van den Berg 329, is clearly capable of performing the recited function. (APPARATUS CLAIMS MUST BE STRUCTURALLY DISTINGUISHABLE FROM THE PRIOR ART >While features of an apparatus may be recited either structurally or functionally, claims< directed to >an< apparatus must be distinguished from the prior art in terms of structure rather than function. >In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also In re Swinehart, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971);< In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original)). Re claims 3 and 4, Kuta (col. 2, lines 3-19 and Abstract), Buck (col. 8, lines 45-56) and Labib (see last 7 lines of paragraph 103) each disclose the measurable physical parameter being pH or conductivity. Also note that Kuta discloses a plurality of solutions with one being an alkaline solution (col. 4, line 25) and an acidic rinse (col. 4, line 42) and van den Berg'033 discloses the same (see col. 6, lines 1-9). Clearly various fluids may be used in the cleaning process dependent upon the type of cleaning desired and the associated

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parameters. This is also applicable to the subject matter of claim 5. Re claim 6, as proposedly modified, van den Berg'329's controller/sensor is clearly capable of functioning in manner as instantly claimed.

3. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the applied prior art as applied to claim 1 above, and further in view of either Redin or Duckett et al.

Claim 2 defines over the applied prior art only in the recitation of the second tank and the second composition. Redin and Duckett are each cited disclosing a clean-in-place system comprising first and second tanks having first and second fluid compositions. It therefore would have been obvious to one having ordinary skill in the art to modify/provide van den Berg'329 with a second tank and composition as taught by either Duckett or Redin, for the purpose of removing any residual cleaning composition. It is old in well known to provide a first cleaning liquid for a washing process and subsequently providing a rinse composition for the removal of the washing composition.

4. Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection. In regard to the remarks that van de Berg fails to disclose the inclusion of the flow rate as a parameter in operating the cleaning process, it is and well known to include more than one parameter/property to control a washing process. Clearly, temperature, conductivity or pH properties could all be incorporated in the control process, since this is considered to be an extension of the teachings of van den Berg'329.

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5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRANKIE L. STINSON whose telephone number is (571) 272-1308. The examiner can normally be reached on M-F from 5:30 am to 2:00 pm and some Saturdays from approximately 5:30 am to 11:30 am.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr, can be reached on (571) 272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-272-8300.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

fls

  
FRANKIE L. STINSON  
Primary Examiner  
GROUP ART UNIT 1746